IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8973 OF 2004

Sadanand Rajaram Mestry
& Ors. . .. Petitioners.

vs.

Manohar Raghunath Gawade
& Anr. .. Respondents.

Mr. G.J. Mohan Rao for petitioners.
Mr. R.S. Apte with M.S. Lagu
for respondent no.1.

CORAM : S.U. KAMDAR, J.
DATE : 18th November, 2005.

P.C.:

. The respondent no. 1 has filed a suit before the Civil Judge, Jr. Division, Ulhasnagar inter alia challenging the order passed by the Secondary school Committee by which he has been prevented from acting as a Chairman of the School Committee. In this suit an application was made for dismissal of the suit on the ground of want of jurisdiction. The application was granted by the learned Civil Judge, Jr. Division at Ulhasnagar.

The respondent no. 1 preferred an appeal against the said order before the District Judge and by an order dated 2.7.2004 the appeal is allowed and the order of the learned Civil Judge, Jr. Division has been set aside and it has been held that the Civil Court has jurisdiction to try the present suit.

2. It is this order which is the subject matter of challenge before me. The learned counsel for the petitioners has contended that the order passed by the District Judge in Appeal is required to be interfered with on the ground that by virtue of the provisions of Section 80 of the Bombay Public Trusts Act, 1950 there is a bar to the jurisdiction of civil court and thus civil court cannot exercise power under section 9 of the CPC. It is well settled that the exclusion of the jurisdiction of the civil court must be strictly construed. In that matter the reference is required to be drawn to the judgment of the Apex Court in the case of Sahebgouda v. Ogeppa, reported in AIR 2003 SC 2743 In the present case the bar which has been pleaded under section 80 of the Bombay Public Trusts Act, 1950 reads as under :-

> " Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act, to be decided or dealt

with by any officer or authority under this Act, [and in respect of] which the decision or order of such officer or authority has been made final and conclusive."

It was thereafter inter alia pleaded that the Civil court shall have no jurisdiction to decide or deal with the question if any such question under the provisions of the Act is required to be exclusively decided or dealt with by any officer or authority under this act and such decision or order of the officer or authority has become final and conclusive. The learned counsel for the petitioner has contended that the order of the School Committee refusing to permit the Respondent No. 1 as a Chairman of the School Committee is required to be determined by the Charity Commissioner under the provisions of Section 36 A of the Bombay Public Trust Act, 1950. In my view, neither the provisions of Section 36 A nor section 50 A of the Bombay Public Trust Act apply to the facts of the present case. The provisions of section 36 A inter alia contemplate the powers and duties and/or restrictions on trustees. It does not provide for any adjudication for any of the dispute which arises amongst the members of the School Committee. Similarly, the provisions of Section 50 A only contemplate a framing of the scheme for better management of the trust. In my opinion, there is no

provision under the Bombay Public Trust Act, 1950 providing for adjudication by any officer or authority of a nature of the dispute raised in the present suit. In that view of the matter, the contentions advanced by the learned counsel for the petitioner that by virtue of the bar contained under section 80 of the Bombay Public Trust Act, 1950 the impugned order is required to be rejected. In that view of the matter, petition fails. No order as to costs.